

TO AUTHORIZE THE COQUILLE INDIAN TRIBE OF THE
STATE OF OREGON TO CONVEY LAND AND INTERESTS
IN LAND OWNED BY THE TRIBE

JULY 30, 2007.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 2863]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2863) to authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. LAND AND INTERESTS OF COQUILLE INDIAN TRIBE, OREGON.

(a) **IN GENERAL.**—Subject to subsections (b), (c), and (d) notwithstanding any other provision of law (including regulations), the Coquille Indian Tribe of the State of Oregon (including any agent or instrumentality of the Tribe) (referred to in this section as the “Tribe”), may transfer, lease, encumber, or otherwise convey, without further authorization or approval, all or any part of the Tribe’s interest in any real property that is not held in trust by the United States for the benefit of the Tribe.

(b) **NONAPPLICABILITY TO CERTAIN CONVEYANCES.**—Subsection (a) shall not apply with respect to any transfer, encumbrance, lease, or other conveyance of any land or interest in land of the Tribe that occurred before January 1, 2007.

(c) **EFFECT OF SECTION.**—Nothing in this section is intended to authorize the Tribe to transfer, lease, encumber, or otherwise convey, any lands, or any interest in any lands, that are held in trust by the United States for the benefit of the Tribe.

(d) **LIABILITY.**—The United States shall not be held liable to any party (including the Tribe or any agent or instrumentality of the Tribe) for any term of, or any loss resulting from the term of any transfer, lease, encumbrance, or conveyance of land made pursuant to this Act unless the United States or an agent or instrumentality of the United States is a party to the transaction or the United States would be liable pursuant to any other provision of law. This subsection shall not apply to land transferred or conveyed by the Tribe to the United States to be held in trust for the benefit of the Tribe.

PURPOSE OF THE BILL

The purpose of H.R. 2863 is to authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe.

BACKGROUND AND NEED FOR LEGISLATION

The Coquille Indian Tribe is located near the eastern shore of Coos Bay in southwest Oregon. The Tribe's land base consists of approximately 6,400 acres of trust land and 200 acres of fee land located in Coos, Curry, Lane, Douglas, and Jackson Counties.

In 1992, the Tribe established the Coquille Economic Development Corporation (CEDCO) to engage in economic development ventures on behalf of the Tribe. One of CEDCO's projects is the development of the 55-acre KoKwel Wharf project. It will include a warehouse-style store, which will be surrounded by more than 150,000 square feet of retail shops, restaurants, and entertainment venues as well as a bay-front walkway that will connect to the City of North Bend's urban renewal project. The estimated cost of the project is approximately \$50 million. The project is supported by the Coquille Tribe, the City of North Bend, and other local government and business leaders.

Home Depot, the proposed anchor tenant, is planning a \$17 million investment and a 130,000 square foot facility as part of the project. But CEDCO and Home Depot's efforts are impeded by the Non-Intercourse Act. Home Depot will not agree to sign a commercial lease without Congressional approval. Rather than amend the Non-Intercourse Act, this bill authorizes the Tribe to convey land and interests in land thereby allowing the Tribe to lease property to Home Depot and other potential tenants. Because the land will continue to be held in fee, gaming may not be conducted on this land.

Non-Intercourse Act (25 U.S.C. § 177)

Originally enacted in 1790, the Non-Intercourse Act reserves to the United States the exclusive right to acquire Indian lands. The Act was intended to protect Indian tribes by preventing the loss of their lands, except by treaty. It does so by preventing the transfer, sale, lease, or other conveyance of land owned by an Indian tribe to third parties without federal approval. This prohibition applies to both trust and fee lands, regardless of the source of money used to obtain the lands. Finally, the Department of the Interior does not have the authority to administratively waive the Non-Intercourse Act.

Legislative history

H.R. 2863 was introduced by Representative DeFazio (D-OR) on June 26, 2007 and was referred to the House Committee on Natural Resources. A Senate companion bill, S.1286, was introduced by Senator Smith (R-OR) on May 3, 2007 and referred to the Senate Committee on Indian Affairs.

COMMITTEE ACTION

H.R. 2863 was introduced on June 26, 2007 by Representative DeFazio (D-OR). The bill was referred to the Committee on Nat-

ural Resources. On July 11, 2007, the full Natural Resources Committee held a hearing on H.R. 2863, at which the Department of the Interior testified in support of the measure with some recommended changes. On July 18, 2007, the full Committee met to consider the bill. Representative DeFazio (D-OR) offered an amendment to incorporate the changes suggested by the Department of the Interior. It clarifies that trust lands may not be transferred, leased, encumbered, or otherwise conveyed pursuant to this Act. The amendment also provides that the federal government will not be liable for transactions between the Tribe and third parties, unless otherwise liable under another provision of law. It was adopted by unanimous consent. The bill, as amended, was then ordered favorably reported to the House of Representatives by unanimous consent.

SECTION-BY-SECTION ANALYSIS

Section 1. Land and interests of Coquille Indian Tribe, Oregon

Section 1 provides that the Tribe may transfer, lease, encumber, or otherwise convey land, or any interest in land, not held in trust by the United States for the benefit of the Tribe. This Act does not apply to any transfer, encumbrance, lease, or other conveyance of any land or interest in land of the Tribe that occurred before January 1, 2007. Lastly, this section provides that the United States will not be responsible for losses resulting from transactions made pursuant to this Act between the Tribe and third parties, unless otherwise liable under another provision of law. The limitation on liability also does not apply to any lands transferred by the Tribe to the United States to be held in trust for the benefit of the Tribe.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 2863—A bill to authorize the Coquille Indian Tribe of the state of Oregon to convey land and interests in land owned by the tribe

H.R. 2863 would authorize the Coquille Indian Tribe to lease or convey, without the approval of the Secretary of the Interior, any land or interest in land owned by the Tribe and not held in trust by the United States. Based on information from the Bureau of Indian Affairs, CBO estimates that implementing this bill would have no significant effect on the federal budget.

The tribe purchased about 50 acres of land in North Bend, Oregon, to lease or sell the property for retail development. Currently, the Non-Intercourse Act prohibits the conveyance of an interest in land from an Indian tribe without approval by the Secretary. However, because of a dispute in the federal courts, it is not clear whether the land specified under the bill would be subject to this prohibition.

H.R. 2863 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The staff contact for this estimate is Leigh Angres. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 2863 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.